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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,972	07/14/2003	Yi-Hung Lin	PUSA030634	9691
23595	7590	12/06/2005		
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			EXAMINER LUONG, SHIAN TINH NHAN	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/620,972

Applicant(s)

LIN, YI-HUNG

Examiner

Shian T. Luong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 11, 15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 12-14 is/are rejected.
- 7) ☒ Claim(s) 8-10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

*Election/Restrictions*

1. Claims 11,15-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11/3/05.

The traversal is on the grounds that the examiner has not provided reasons and/or examples for imposing the restriction requirement and no indication of different field of search. This is not found persuasive because the election requirement in this application is not based on distinct inventions but is based on the inventions being independent inventions. Therefore, the practice which must be applied, and was in fact applied by the examiner in this application, is set forth at MPEP 808-808.01(a), and 809.02(a). And while it is true that the examiner is required to explain why the claimed inventions are independent and to set forth reasons for insisting upon restriction (MPEP 808), these requirements are satisfied when the examiner merely determines that the species, as claimed are directed to mutually patentable inventions and requires election of species (see MPEP 808.01(a), and note the discussion in MPEP 806.04(h) which is referenced therein. See also MPEP 809.02(a) and paragraph 8.01 referenced therein). The examiner is not required to show a reasons for insisting on restriction (a burden) such as separate classification or separate status in the art (see MPEP 808.01(a), last two lines of the first paragraph. Applicant does not, therefore, need a detailed analysis of why the examiner has held that the claimed species are capable of supporting separate patents. For if the examiner determines that the claimed species are capable of supporting separate patents, then the Office will in fact issue separate patents (assuming the species to be patentable) for each of the species, without applying any strictures under double patenting (see 35 USC 121). If applicant feels otherwise, applicant

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need only so state, positively, on record. Then the restriction requirement will be withdrawn, and all of the claimed species will be examined in one application. Of course, in the event that a generic claim is found allowable, the election requirement will also be withdrawn in this application, MPEP 809.02(b). Applicant is not, however, entitled to an examination of claims directed to multiple independent inventions in one application. And inventions are independent when, as disclosed, they are species under a genus, as discussed in MPEP 806.04, and not also dependent inventions.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 112***

2. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 5, line 2, the term "top face" lacks proper antecedent basis.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,5,14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hierzer et al. (US 6,394,293). Hierzer et al. discloses a container comprising a main body 28 and a top cover 12 mounted on the main body and having a bottom wall provided with a reflective face directed

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toward the main body just as the reflective surface 412 shown in Figure 4 to provide an optical reflective effect. The main body has a top face provided with stepped annular protruding flange extending upwardly therefrom. The top cover has a bottom face formed with a circular mounting recess to receive the protruding flange of the main body. The top cover has a reflective surface 11.

5. Claims 1,12 are rejected under 35 U.S.C. 102(b) as being anticipated by Griffin (US 4,475,661). Griffin discloses a container comprising a main body 12 and a top cover 14 mounted on the main body and having a bottom wall provided with a reflective face 20,22 directed toward the main body to provide an optical reflective effect. The top cover has a bottom face formed with a circular mounting recess to receive the protruding flange of the main body. The cover has transparent material 26.

### *Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-3, 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hierzer et al. or Griffin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the cover and the main body out of transparent or translucent material, since it has been held to be within the general skill of a worker in the art to select a

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known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hierzer et al. or Griffin in view of Official Notice. Although Hierzer et al. or Griffin does not disclose storing cosmetic within the package, it would have been obvious to store any solid or liquid material such as cosmetic within the package for sale.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hierzer et al in view of Peters (US 2,022,780). Although Hierzer et al.'s threads does not show the L-shaped snapping plates, Peter shows a container with an L-shaped snapping plates in the main body and what appears to be rectangular blocking blocks. The blocking blocks engage the L-shaped snapping plates in a closed position to resist the backward turning of the cover and to prevent accidental displacement or loosening of the cover. It would have been obvious in view of Peters to provide individual L-shaped snapping plates on the container of Hierzer et al. to save material cost.

10. Claims 1-5, 7,12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Admitted Prior Art on pages 1 and 2 of the specification in view of Griffin. Admitted Prior Art as shown in Figure 13-15 does not disclose the transparency and the optical reflective effect. However, Griffin discloses a container comprising a main body 12 and a top cover 14 mounted on the main body and having a bottom wall provided with a reflective face 20,22 directed toward the main body to provide an optical reflective effect. The top cover has a bottom face formed with a circular mounting recess to receive the protruding flange of the main body. The cover has transparent material 26. The indicator element is a lenticular sheet assembly comprised of upper

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and lower lenticular sheets mounted within the cap so as to present an aesthetically pleasing visual pattern facing from the cover. Therefore, it would have been obvious to provide reflective surface to present pleasing visual pattern to attract buyer.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to paragraph 10, further in view of Peters (US 2,022,780). Although Admitted Prior Art does not show the L-shaped snapping plates, Peter shows a container with an L-shaped snapping plates in the main body and what appears to be rectangular blocking blocks. The blocking blocks engage the L-shaped snapping plates in a closed position to resist the backward turning of the cover and to prevent accidental displacement or loosening of the cover. It would have been obvious in view of Peters to provide individual L-shaped snapping plates on the container of Admitted Prior Art to save material cost.

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied above with respect to claim 1, further in view of Official Notice. Although Admitted Prior Art does not show a top cover with multi-angled refractive face, Official Notice is taken of the conventional use of refractive surface on the cover top surface to attract buyer. Hence, it would have been obvious in view of Official Notice to provide refractive surface on the cosmetic cover of Admitted Prior Art to attract buyer.

#### *Allowable Subject Matter*

13. Claims 8-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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*Conclusion*


14. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Erica Miller at (571) 272-4370.

For applicant's convenience, the official FAX number is 571-273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (571) 272-4557. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST.

STL  
December 3, 2005

  
Primary Examiner  
Shian Luong  
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